IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-995

J. CLEM DREWETT, ET AL,
Appellants,

v.

STATE OF LOUISIANA
Appellee

On Appeal from Order of the Supreme Court of Louisiana and Judgment of the Court of Appeal, First Circuit, State of Louisiana

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

On October 20, 1976, the Supreme Court of Louisiana issued its Order declaring:

"Writ denied. The judgment of the Court of Appeal is correct." (App. A-1, page 35)

Such Order, denying plaintiffs' application for writ of certiorari or review, is final (Rule 9, §6, Supreme Court of Louisiana).

The judgement of the Court of Appeal, affirmed by the Supreme Court of Louisiana, sustains the constitutionality of the revised state revenue sharing and property tax exemption plan adopted following *Levy* v. *Parker*, 346 F. Supp. 89 (1972); affirmed 411 U. S. 978, 93A S. Ct. 2266,

36 L. Ed. d 955. *Levy* held the Louisiana tax assessment and reim rsal plan unconstitutional because it denied equal pro tion of the law. The judgment of the Court of Appeal is ported in 334 So. 2d 443 and is included herein as Appen x A, page 20.

JURISDICTION

Pl ntiffs challenge the revised state revenue sharing d homestead property tax exemption plan of Louisian n the grounds that the plan and the application thereof d ies equal protection of the law and impairs the security outstanding bonds.

T Order of the Supreme Court of Louisiana, entered ober 20, 1976, sustains the constitutionality of the revis revenue sharing and tax exemption plan. The jurisdict of this Court is invoked under the provisions of Title 28, nited States Code, §1257 (2).

ONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Pr r to *Levy* v. *Parker*, Article 10, §4 9, Louisian Constitution of 1921, granted a $2,000 homeste exemption *conditioned* upon reimbursal of tax losses fr state revenue sharing funds. The pertinent part of this S tion is included herein as Appendix B.

F owing *Levy*, Article 10, §4 9 was amended by Act 10 of he Extra Session of 1972, to make the homestead exemptic unconditional. (App. C)

A hough a new Louisiana Constitution became effective nuary 1, 1975, the foregoing Article 10, §4 9 of the 1921 onstitution continues in effect until January 1, 1978, un r the authority of Article 14, §13, Constitution of 1974. pp. D)

U der the new 1974 Louisiana Constitution, residenti properties are to be assessed for property tax

purposes at 10% of fair market value, under the authority of Article 7, §18 (App. E), and the homestead exemption is to be increased to $5,000, under Article 7, §10, Constitution of 1974 and Act 387 of 1976 (App. G).

The 10% fair market value and $5,000 homestead exemption provisions become effective January 1, 1978, under the authority of Article 14, §13, Constitution of 1974. (App. D)

Article 7, §26, Constitution of 1974, creates a $90,000,000 revenue sharing fund to reimburse losses from the homestead exemption on a "first priority" basis. (App. H)

Act 719 of 1975 allocates and appropriates revenue sharing monies to the 64 parishes of the state in accordance with a "rational formula" based on population, etc. (App. I) However, other provisions of Act 719 of 1975 do not follow any "rational formula", as certain parishes are singled out for favored treatment. (App. J)

STATEMENT OF THE CASE

Louisiana grants a property tax exemption in the amount of $2,000 of assessed valuation (the "homestead exemption"). Prior to *Levy* v. *Parker*, tax losses from the homestead exemption were reimbursed to local tax recipient bodies by the State. The homestead exemption did not apply unless sufficient state revenue sharing monies were available to make the reimbursal. *Levy* v. *Parker* found the Louisiana tax assessment, homestead exemption, and reimbursal plan denied equal protection under the law.

Louisiana revised the plan in a manner that retains the tax assessment practices found constitutionally objectionable in *Levy*, but continues state revenue sharing.

Louisiana justifies its continued revenue sharing despite the failure to eliminate tax assessment practices that admittedly deny equal protection of the law, on the basis that a "rational formula" is employed to allocate state revenue sharing monies. Plaintiffs contend that so long as they are denied equal protection under the law, no "rational formula" can exist.

The Federal questions presented herein are based on facts established in thirty-five joint stipulations appearing in "Volume II, Joint Stipulations" No. 10825, appeal record herein. Fifteen briefs were submitted to the state courts (See Volume II, No. 58371), including Petition for Writs of Certiorari or Review to the Supreme Court of Louisiana, "Volume I", No. 58371. During the appeal, Act 387 of 1976 increased the homestead exemption to $5,000; the Petition for Writs of Certiorari or Review to the state supreme court fully anticipated such amendment.

The judgment of the Louisiana Court of Appeal specifically finds and declares that the assessment and tax practices enjoined by *Levy* continue in Louisiana today. The Louisiana Court goes on to hold that so long as such practices continue, state revenue sharing under a "rational formula" cannot be contested. Plaintiffs contend that so long as assessment and tax practices deny equal protection under the law, there can be no "rational formula".

The losses to Calcasieu from the illegal revenue sharing plan are substantial. The Court of Appeal's decision found:

> "* * * The amount available for distribution through the recipient bodies after allowance for Sheriff's commissions and retirement contributions was $3,044,150.00. The amount of tax revenue Calcasieu claims to have lost due to homestead exemptions allowed in the parish is $3,491,149.00.

> As can readily be seen, Calcasieu's portion of the Revenue Sharing Fund amounts to only eighty-seven percent of the revenues claimed lost. * * *"

The deficiency results in tax increases to taxpayers and a reduction in governmental services. In either case the rights and interests of the citizens of Calcasieu are prejudiced. The losses and shortages will increase with the increase in the homestead exemption, from $2,000 to $5,000, as is herein shown. Additional new taxes for school and other essential public purposes will further increase the prejudicial effects of the unconstitutional revenue sharing plan.

QUESTION PRESENTED

Whether state revenue sharing may be continued under an assessment, tax, and exemption plan that continues to deny equal protection of the law, contrary to *Levy*.

FEDERAL QUESTIONS ARE SUBSTANTIAL

Levy v. *Parker* enjoined Louisiana from allocating and distributing state revenue sharing monies so long as discriminatory and manipulative assessment and tax practices were allowed to continue. Such practices, however, are popular with a majority of the voters. Accordingly, the revised plan of tax assessment, exemption, and reimbursal, partially in effect, fails to eliminate or reduce the discriminatory and manipulative practices enjoined by *Levy*. As of the date of this appeal, nearly five years after *Levy*, the practices continue as if *Levy* had never been decided. (App. K)

Circumvention of the *Levy* injunction has been accomplished by enactment of a so-called "rational formula" for continued state revenue sharing. From a tax increase (other than property taxes) the amount of revenue

sharing monies were greatly increased so that most parishes continue to be reimbursed their homestead exemption losses in full; and in addition, receive a substantial "windfall" surplus. Some parishes that do not receive full reimbursal of losses from the homestead exemption obtain special revenue sharing appropriations. Calcasieu Parish has not received any special appropriations. The Court of Appeals specifically found that the objectionable manipulative practices, enjoined by *Levy*, continue unabated in Louisiana today:

> " * * * Thus, the actual losses claimed by a parish *are subject to manipulation* by the use of high millage rates coupled with artificially low assessments within the parish. This is *precisely* what the Court in *Levy*, supra, *found objectionable*, that distributions were made from the Property Tax Relief Fund on the basis of losses claimed by a parish. Yet, plaintiffs herein ask us to find that they have been treated unfairly because these same losses were not reimbursed one hundred percent. We feel that in the light of *Levy*, supra, the *extent of reimbursal of homestead exemption as long as there exists no uniform system of assessment, is irrelevant*. The paramount factor is the implementation of a formula for distribution based on relevant variables not subject to the whim of local political practices." (Emphasis added.) (App. A, page 25)

The important Federal question presented in this case is whether a state may continue to deny equal protection of the law almost five years after injunction affirmed by this Honorable Supreme Court has issued.

Levy enjoined state revenue sharing as a *means of enforcing the elimination of the objectionable manipulative assessment and tax exemption and reimbursal practices*. Louisiana's interpretation of a "rational formula" to

justify continuation of state revenue sharing does not correct the primary problem of manipulative tax assessment practices sought to be enjoined by *Levy*. The Court of Appeal's judgment arrives at the anomalous conclusion that judicial relief is not available to remedy a denial of equal protection as long as denial of equal protection of the law continues.

There is nothing in the Federal Constitution that says Louisiana revenue sharing *must be continued*, even in the face of discrimination. To the contrary, *Levy* attempts to stop revenue sharing until a complete tax assessment, exemption, and reimbursal plan is devised. Revenue sharing finances the discriminative practices.

Continued denial of equal protection of the law in vital aspects of the plan invalidates the whole; the whole is dependent upon the validity of each of its parts. There can be no "rational formula" for revenue sharing so long as Louisiana denies equal protection of the law in the underlying areas of tax assessment and exemption practices.

On January 1, 1978, denial of equal protection of the law will be further aggravated when §§ 18 and 20 of Article 7, Constitution of 1974, become effective.

PROHIBITED MANIPULATIONS

Since 1972, certain parishes have gone to the Legislature and successfully obtained passage of special revenue sharing appropriations in addition to their share of regular revenue sharing allotments under the "rational formula". Such special appropriations having been made in 1972, 1973, 1974, 1975, and 1976 demonstrate a "continuing" feature of the plan, as distinguished from isolated appropriations. Act 16 of 1975, Item 14 (App J) is one example of such a special revenue sharing

appropriation outside of the regular "rational formula" appropriations under Act 719 of 1975 (App. I). Entitled "Supplemental Revenue Sharing Program", Item 14 gives St. Tammany $184,596; St. Bernard $150,000; and Jefferson $150,000. The Court of Appeal said:

> "* * * it [(the state)] has enacted a formula not subject to self-serving manipulation through which those funds may be distributed. * * *"

Clearly such special treatment to St. Tammany, St. Bernard, and Jefferson parishes *is* a self-serving manipulation as prohibited by *Levy*. Plaintiffs respectfully suggest that lobbying for, and participating in legislative logrolling to obtain special revenue sharing appropriations each year is not a "rational formula".

CUTOFF DATE DISCRIMINATION

Levy enjoined Louisiana from revenue sharing allocated on the basis of arbitrary "cutoff dates" for the establishment of tax exemptions on which state revenue sharing was based. Such discriminatory "cutoff dates" for the establishment of the tax exemptions continue despite *Levy*, as described as follows.

A "tax recipient body" is a body entitled to receive state revenue sharing. Section 1, Paragraph (a) of Act 719 of 1975 (App. I) defines a "tax recipient body" as:

> "(a) 'tax recipient bodies' shall mean the city of New Orleans, parish governing authorities, school boards, special taxing districts, and other bodies which were eligible for reimbursement or payment from the property tax relief fund *prior to its abolition and repeal by Act No. 10 of the 1972 Extraordinary Session. In East Baton Rouge and Terrebonne Parishes, tax recipient bodies* shall include *all public bodies* authorized to levy taxes *as*

of July 1, 1975, whose taxes were subject to homestead exemption." (Emphasis added.)

Under the foregoing language, East Baton Rouge and Terrebonne parishes are singled out for special favored treatment in the following respects:

a. The cut-off date in East Baton Rouge and Terrebonne for a body entitled to revenue sharing is *July 1, 1975*. The cut-off date in other parishes is *prior* to abolishment of the old revenue sharing fund in 1972.

b. *All* public bodies in East Baton Rouge and Terrebonne parishes are entitled to revenue sharing; whereas, in all other parishes, special taxing bodies must have been eligible for state revenue sharing under the rules that were effective prior to *Levy* v. *Parker*.

This is the kind of clear-cut favoritism *Levy* denounced.

IMPAIRMENT OF TAXATION THROUGH TAX EXEMPTION DENIES EQUAL PROTECTION

The original purpose of the Louisiana homestead exemption is explained by *Levy*:

> "* * * During the depression of the thirties the ad valorem property tax imposed hardship on property owners, and *unemployed working men* who *owned their own homes were in a particularly serious predicament: unable to find jobs, they could not even raise money to pay property taxes. Many had lost their homes at tax sales, and many more faced this threat*." (Emphasis added.)

Article 7, §18 (App. E) provides that residential properties are to be assessed for property tax purposes at 10% of fair market value.

Article 7, §20 (App. F) and Act 387 of 1976 (App. G) increase the homestead exemption to $5,000. A combination of these two factors results in a $50,000 house being exempted from property taxation (municipal taxes are not exempt).

For example, a house having a fair market value of $50,000 is to be assessed at 10%. Ten percent of $50,000 is $5,000. This remaining $5,000 "assessed valuation" is relieved of property tax liability by the $5,000 homestead exemption.

The state revenue sharing fund, created by Article 7, §26 (App. H), will be grossly inadequate to reimburse losses from the $50,000 exemption. Under the existing $2,000 exemption, plaintiffs' unreimbursed losses were substantial. The Court of Appeal's judgment finds:

> " * * * It is true that such [revenue sharing] appropriations were only eighty-seven percent of the losses claimed by Calcasieu * * * "

An increase to a $50,000 exemption will change the 87% figure to a 50% reimbursal in Calcasieu Parish, or even less. Non-exempt and other classes of taxpayers will have to pay the cost of the "exemption".

Providing tax relief to those most able to pay—the middle and upper income groups in the $50,000 category—will shift the tax burden to low income families, as the non-exempt taxpayer will pass along his increased cost to the consumer in the form of higher prices for food, clothing, services, etc., and local government will resort to other taxes, such as sales taxes, to make up for revenue lost due to the greatly expanded homestead exemption.

In *City of Phoenix, Arizona* v. *Kolodziejski*, 399 U. S. 204, 90A S. Ct. 1990, the Supreme Court struck down the "property taxpayer" voter qualification, essentially for

the reason that:

> "* * * Property taxes may be paid initially by property owners, but a significant part of the ultimate burden of each year's tax on rental property will very likely be borne by the *tenant* rather than the landlord since, as the parties also stipulated in this case, the landlord will treat the property tax as a *business expense* and normally will be able to *pass all or a large part of this cost on* to the tenants in the form of higher rent * * * Since most city residents not owning their own homes are lessees of dwelling units, virtually all residents share the burden of property taxes imposed and used to service general obligation bonds. Moreover, property taxes on commercial property, * * * much of which is owned by corporations having no vote, will be *treated as a cost of doing business* and will *normally be reflected in the prices of goods and services* purchased by nonproperty owners and property owners alike." (Emphasis added.)

In the matter of *Allied Stores of Ohio, Inc.* v. *Stanley J. Bowers, Tax Commissioner of Ohio*, 358 U. S. 522, 79 S. Ct. 437, the Supreme Court of the United States *upheld* a tax exemption, holding that states have a very wide discretion in the levying of their taxes, but there is a *point beyond which the state cannot go*:

> "[8-10] But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is *palpably arbitrary*. The rule often has been stated to be that the classification 'must rest upon some *ground of difference* having a *fair and substantial relation to the object of the legislation* * * * If the selection or *classification* is neither

> *capricious nor arbitrary*, and rests upon some *reasonable consideration of difference or policy*, there is no denial of the equal protection of the law.' * * *" (Emphasis added.)

Chief Justice Charles Evans Hughes, speaking for the Court in *Ohio Oil Co.* v. *Conway*, 50 S. Ct. 314, 281 U. S. 146, said:

> "[4] * * * With all this freedom of action, there is a point beyond which the State cannot go without violating the equal protection clause. The State may classify broadly the subjects of taxation, but in doing so it must proceed upon a rational basis. The State is not a liberty to resort to a classification that is palpably arbitrary. The rule is generally stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' * * *"

Bowers and *Ohio Oil* do not permit a tax exemption to be capricious or arbitrary. The exemption must rest upon some ground of difference having a fair and substantial relationship to the *object* of the exemption.

In *Dane* v. *Jackson, Treasurer, etc.*, 256 U. S. 589, 41 S. Ct. 566, the Supreme Court of the United States upheld revenue sharing to local subdivisions from monies derived by the state from income taxation, saying:

> "[1] While the nature of the subject does not permit of much finality of general statement, it may plainly be derived from the cases cited that since the system of taxation has not yet been devised which will return *precisely the same measure of benefit* to each taxpayer or class of taxpayers, *in proportion to payment made*, as will be returned to every other

individual or class paying a given tax, it is not within either the disposition or power of this court to revise the necessarily complicated taxing systems of the states for the purpose of attempting to produce what might be thought to be a more * * * just distribution of the * * * burdens of taxation than that arrived at by the state Legislatures * * * and that where, as here, conflict with federal power is not involved, a state tax law will be held to conflict with the Fourteenth Amendment only where it proposes, or clearly results in, such *flagrant and palpable inequality between the burden imposed and the benefit received*, as to amount to *the arbitrary taking of property without compensation*—'to spoliation under the guise of exerting the power of taxing.' * * *" (Emphasis added.)

The exempted homestead taxpayer receives great benefits from the school, fire, police, and other taxes he *does not* have to pay. It is clear that the $50,000 exemption is a "flagrant and palpable inequality between the burden imposed and the benefit received"; the shifting of the tax burden to the "non-exempt" and other classes of taxpayers amounts "to the arbitrary taking of property without compensation—'to spoliation under the guise of exerting the power of taxing' ".

In *Kahn, etc.* v. *Robert L. Shevin, et al*, 416 U. S. 384, 40 L. Ed. 2d 189, 94A S. Ct. 1734, the Supreme Court of the United States upheld the validity of a Florida statute giving widows a $500 exemption from property taxation, The Court said:

"* * * We have long held that '[W]here taxation is concerned and no specific federal right, apart from equal protection, is imperilled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems

of taxation.' * * * A state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class...if the discrimination *is founded upon a reasonable distinction, or difference in state policy*,' not in conflict with the Federal Constitution. * * *" (Emphasis added.)

What is the "reasonable distinction" in classifying a $50,000 house free from property taxation, while taxing a family living in an apartment? Is the head of household residing in an apartment any less entitled to an exemption than the head of household who resides in a "house"? The apartment dweller will be required to pay increased taxes resulting from the $50,000 "house" exemption.

Taxes are essential and must be paid by someone. The $50,000 exemption permits a reasonably financially able citizen to escape property taxation for fire and law enforcement services, sewerage, water, road, garbage, street lighting, hospital, health care, library, and school maintenance for the education of his children, and such is in violation of *City of Phoenix*, *Bowers*, and *Ohio Oil*.

Levy said:

"* * * Tax relief funds, designed to assist localities by making funds raised by the state taxes available to local governmental agencies, must be administered by statute and in practice so as to avoid that *governmental favoritism to one person over another* that the Fourteenth Amendment was designed to proscribe. * * *" (Emphasis added.)

The "favoritism to one person over another" has not been eliminated, but only intensified by the revised tax exemption and reimbursement plan. Freeing one class of citizens from taxation by transferring *their fair share* of tax liability to another class of non-exempt taxpayers *is* "favoritism", as denounced by *Levy*; no "rational

formula" can exist where equal protection is so denied.

Huey Long's "object" in creating an exemption to protect the unemployed working man from loss of his home is not the object of the new $50,000 exemption.

The "object" of the new $50,000 exemption is to achieve *popular support* for the new plan mandated by *Levy*, but to do so in a manner that relieves the majority of property taxpayers from any tax liability. Political popularity is not the "fair and substantial ground" referred to by Chief Justice Hughes.

CONTRACT CLAUSE

The general obligation bondholder, prior to *Levy* v. *Parker*, was assured by the Louisiana Constitution that state revenue sharing monies would reimburse tax losses; otherwise, the exemption in favor of the "homestead" taxpayer did not apply (Article X, §4 9, Louisiana Constitution of 1921. (App. B) Bond purchasers knew that tax loss reimbursals were assured from state revenue sharing monies. The conditional exemption was not a liability, as in many cases, the state's assured reimbursal was a better source of payment than the exempted taxpayer.

Following *Levy* v. *Parker*, the exemption was made "unconditional". (App. C) Under the "rational formula", distribution of reimbursals of tax losses securing bonds was no longer assured by the state. The pre-1972 bond thereby suffered a real and substantial loss of security. Stipulation No. 32, Volume II (page 258, Exhibits) shows that the assessed valuation of School District No. 29 of Calcasieu Parish is reduced by 32.77% by eliminating homestead exempt properties. Other taxing districts in Calcasieu Parish have suffered a loss in the following percentages:

City of Lake Charles	29.68%
School District No. 27	39.04%
Gravity Drainage District No. 4	29.23%
Sub-1 of Gravity Drainage District No. 4	46.78%
Road District No. 1	39.04%
Community Center and Playground District No. 4	39.04%

The Court of Appeal said:

"[4,5] We find no merit to plaintiffs' argument insofar as it pertains to the impairment of contracts inasmuch as reimbursements have never been pledged as security for these contracts and thus do not form a part of them. With respect to the impairment of security we find such a determination to be one of fact and while plaintiffs have shown a reduction in available funds over those of prior years, there has been no evidence offered to show that such reduction is to the extent that security on the bonds themselves has been in any way affected. We can not equate the mere reduction of revenues with security impairment without a showing of actual circumstances indicating a *real danger* to the ability of municipalities to satisfy present bond obligations. No such showing has been made herein." (Emphasis added.)

Plaintiffs show that a "pledge" of state revenue sharing monies was not necessary for a bondholder to acquire contract rights protected by the contract clause. Loss of from 30% to nearly 50% of the taxing base of a district has been proven. The "real danger" test of the Court of Appeal would come too late to protect the bondholder and the public.

The general rule is stated in 64 Am Jur. 2d, Public Securities and Obligations, §409:

"Laws existing at the time of the issuance of bonds or other obligations by a municipality or political subdivision, authorizing the obligor to levy taxes or to raise revenue with which to pay the obligations, enter into and *become a part of the contracts*, and this taxing power *cannot be abrogated or substantially diminished* while the obligations are outstanding. * * *" (Emphasis added.)

In the matter of *State of Louisiana, ex rel Nelson* v. *Police Jury of the Parish of St. Martin*, 111 U. S. 716, 4 S. Ct. 648 (1884), the Supreme Court of the United States issued a writ of mandamus ordering the levy and collection of a tax to pay a judgment on treasury warrants issued by the Parish of St. Martin, in the amount of $4,500, even though said tax had been subsequently repealed by the Louisiana Legislature:

"* * * 'He [(relator)] was entitled, and the party succeeding to his interest is entitled, to a writ commanding the levy and collection of a sufficient tax to pay the judgment * * * Such right was not only assured by the law *in force when the contract was made*, but was expressly declared in the decree accompanying the judgment and forming part of it. It is difficult to conceive a plainer case for the relief prayed." (Emphasis added.)

In *Louisiana ex rel Hubert* v. *City of New Orleans*, 215 U. S. 170, 30 S. Ct. 40, the United State Supreme Court ordered "The levy and collection of taxes by the city of New Orleans to satisfy outstanding indebtedness of the metropolitan police board, contracted on the faith of the exercise of the taxing power for its payment". The Court quoted with approval from *Wolff* v. *New Orleans*, 103 U. S. 358, 26 L. Ed. 395:

" 'It is true that the power of taxation belongs exclusively to the legislative department * * * subject, however, to this qualification, which attends all state legislation, that its action in that respect shall not conflict with the prohibitions of the Constitution of the United States, and, among other things, shall not operate directly upon contracts of the corporation, so as to impair their obligation by *abrogating or lessening the means of their enforcement*. * * *" (Emphasis added.)

In the matter of *Folks, et al* v. *Marion County*, 163 So. 298 (1935), the Supreme Court of Florida held that a constitutional amendment exempting homesteads from taxation cannot, under the contract clause of the Federal Constitution, operate to preclude their taxation for the payment of bonds outstanding when the constitutional homestead exemption was adopted.

In *Groves* v. *Board of Public Instruction of Manatee County, Florida*, 109 F. 2d 522, the Fifth Circuit Court of Appeal (1940) held that a homestead exemption amendment to the Florida Constitution was legally operative as to all taxes, *except* for the payment of public bonded obligations incurred *before the amendment was adopted.*

CONCLUSION

The Court should take jurisdiction of this appeal.

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APPENDIX A

J. Clem DREWETT et al.,
Plaintiffs-Appellants,

v.

STATE of Louisiana,
Defendant-Appellee.

No. 10825.

Court of Appeal of Louisiana,
First Circuit.

May 24, 1976.

Rehearing Denied June 30, 1976.

Suit was brought for declaratory judgment that statute, which provides formula for allocation and distribution of Revenue Sharing Fund to parishes, was unconstitutional. The 19th Judicial District Court, Parish of East Baton Rouge, Steve A. Alford, Jr., J., upheld constitutionality of statute and dismissed suit, and plaintiffs appealed. The court of Appeal, First Circuit, Sartain, J., held that such statute, which provided in effect that allocation and distribution of Fund to parishes was to be based 80% on population and 20% on number of homesteads, did not deny equal protection due to fact that application of such formula resulted in a parish receiving only 87% of revenue lost as result of homestead exemptions while other parishes received more than the amount of their lost revenue, that such statute is not arbitrary in providing for such formula, that statute did not invalidate taxes in violation of state constitutional provision, that statute did not violate state and federal constitutional provisions in regard to impairment of

contracts, that statute did not impair security in violation of state constitutional provision, that city of Lake Charles did not have independent right to participate in appropriations from Fund beyond city's rights as a body eligible to receive allocation of remaining balances after losses from homestead exemptions were satisfied and that parish did not have standing to advance contention that double deductions for sheriff's commissions and retirement contributions were erroneously made on various parishes' forms.

Affirmed.

Statute, which provided in effect that allocation and distribution of Revenue Sharing Fund to parishes was to be based 80% on population and 20% on number of homesteads, did not deny equal protection due to fact that application of such formula resulted in a parish receiving only 87% of revenue lost as result of homestead exemptions while certain other parishes received more than the amount of their lost revenue, in light of absence of a uniform system of assessment. LSA-Const. 1974, art. 7, §26; LSA-Const. art 10, §§4, 4, subd. 9, 10B; Act No. 719 of 1975, §§ 1 et seq., 3.

Statute which provides formula for allocation and distribution of Revenue Sharing Fund to parishes, is not arbitrary in providing in effect that allocation is to be based 80% on population and 20% on number of homesteads, in light of fact that the formula is rationally related to furthering legitimate state interest of providing funds to parishes for purpose of supporting local governmental programs. LSA-Const. 1974, art. 7, §26; LSA-Const. art. 10, §§ 4, 4, subd. 9, 10B; Act No. 719 of 1975, §§ 1 et seq., 3.

Statute, which provided in effect that allocation and distribution of Revenue Sharing Fund to parishes was to be

based 80% on population and 20% on number of homesteads, did not invalidate taxes in violation of state constitutional provision, though application of such formula resulted in a certain parish receiving less than revenue lost as result of homestead exemptions. LSA-Const. 1974, art. 7, § 26; LSA-Const. art. 10, §§ 4, 4, subd. 9, 10B; Act No. 719 of 1975, §§ 1 et seq., 3.

Statute, which provided in effect that allocation and distribution of Revenue Sharing Fund to parishes was to be based 80% on population and 20% on number of homesteads, did not violate state and federal constitutional provisions in regard to impairment of contracts due to fact that application of such formula resulted in a certain parish receiving less than revenue lost as result of homestead exemptions, in light of fact that reimbursement had never been pledged as security for bonds issued by parish. LSA-Const. 1974, art. 7, §26; Act No. 719 of 1975, §§ 1 et seq., 3; U.S.C.A. Const. art. 1, § 10; LSA-Const. art. 1, § 23; art. 10, §§ 4, 4, subd. 9, 10B.

Statute, which provided in effect that allocation and distribution of Revenue Sharing Fund to parishes was to be based 80% on population and 20% on number of homesteads, did not impair security in violation of state constitutional provision due to fact that application of such formula resulted in a certain parish receiving less than revenue lost as result of homestead exemptions, in light of absence of a showing of a real danger to ability to satisfy bond obligations. LSA-Const. 1974, art. 7, § 26; LSA-Const. art. 10, §§ 4, 4, subd. 9, 10B; Act No. 719 of 1975, §§ 1 et seq., 3.

City of Lake Charles did not have independent right to participate in appropriations from Revenue Sharing Fund beyond city's rights as a body eligible to receive allocation of remaining balances after losses from

homestead exemptions were satisfied. LSA-Const. 1974, art. 7, § 26; LSA-Const. art. 10, §§ 4, 4, subd. 9, 10B; Act No. 719 of 1975, §§ 1 et seq., 3.

Parish, which sought declaratory judgment that statute providing for allocation and distribution of Revenue Sharing Fund was unconstitutional, did not have standing to contend that double deduction for sheriff's commissions and retirement contributions were erroneously made on various parishes' forms, which related to "excesses," if any, parishes would receive after "losses" for homestead exemptions were satisfied, in that only one set of deductions for such items was made on plaintiff parish's form and that such deductions were not related to initial appropriations received from the Fund. LSA-Const. 1974, art. 7, § 26; LSA-Const. art. 10, §§ 4, 4, subd. 9, 10B; Act No. 719 of 1975, §§ 1 et seq., 3.

Fred G. Benton, Jr., Baton Rouge, and Frank T. Salter, Jr., Joseph W. Greenwald, Asst. Parish Atty., Robert M. McHale, City Atty., Lake Charles, for plaintiffs-appellants.

Fred L. Chevalier, Asst. Atty. Gen., Baton Rouge, for defendant-appellee.

Louis D. Bufkin, Lake Charles, for intervenor Charles Molbert.

Before SARTAIN, EDWARDS and CHIASSON, JJ.

This is a suit for declaratory judgment brought by the various plaintiffs herein seeking a declaration of unconstitutionality of Act 719 of 1975 which provides for the allocation and distribution of the Revenue Sharing Fund established by Article 7, Section 26, of the Louisiana Constitution of 1974. The trial judge upheld the

constitutionality of the act and dismissed plaintiffs' suit, thus prompting this appeal. We affirm for reasons stated herein.

HISTORICAL BACKGROUND

In order to present this dispute in proper perspective a brief overview of the past history of Louisiana's ad valorem taxation system is necessary.

In response to depressed economic conditions the Louisiana Constitution during the administration of Governor Huey P. Long was amended to provide an exemption from state, parish and local taxes for the bonafide homestead of each head of household up to an assessed value of $2,000.00. Subsequent amendments increased this amount to $5,000.00 for certain veterans.

The Legislature, recognizing the effect of the exemption on local governments, created the Property Tax Relief Fund pursuant to constitutional authorization, which fund was to be derived from other state taxes. This fund was disputed among the various parishes of the state on the basis of the losses incurred by local governmental units as a result of the homestead exemption.

The distribution of the Property Tax Relief Fund was challenged on the grounds that it was unconstitutional in that it denied equal protection of the laws to certain parishes. The distribution formula was so declared in *Levy v. Parker*, 346 F.Supp. 897 (1972), affirmed 411 U.S. 978, 93 S.Ct. 2266, 36 L.Ed.2d 955. Because of the lack of any uniform system of assessment of property subject to ad valorem taxation and because the disbursement of the fund depended on actual losses claimed by the parishes, the court concluded that the distribution of the fund resulted in arbitrary inequality and discrimination. The court noted that Louisiana's system denied homestead owners in

Orleans Parish and those who pay alcoholic beverage and income taxation (from which a portion of the Property Tax Relief Fund was derived) the same treatment accorded similarly situated taxpayers in other parishes thereby adversely affecting the benefits provided by the local government. The court held that the combination of unequal assessments, limited taxing power and payments from the fund on the basis of local millage rates resulted in an overall system which breached the constitutional rights of the plaintiffs.

In response to the *Levy* decision, to effect compliance therewith, a special session of the Louisiana Legislature was convened and passed Act No. 18 of the extraordinary session of 1972 proposing a constitutional amendment, subsequently adopted by the voters, to amend Article X, Section 4 of the Constitution of 1921 eliminating the [P]roperty Tax Relief Fund and to add Section 10B to provide for the establishment and distribution of revenue sharing fund in the amount of $80,000,000.00 with provisions for additional allocations. The following year the Legislature enacted Act No. 153 of 1973 distributing the Revenue Sharing Fund provided for in the constitution according to the following formula found in Section 3 of the act:

> Section 3. The amount to be distributed annually to each parish from the Revenue Sharing Fund shall be the sum of (a) an amount equal to that percentage of eighty percent of the total fund which is equal to the ratio which the population of the parish bears to the total state population, and (b) an amount equal to that percentage of twenty percent of the total fund which is equal to the ratio which the number of homesteads in the parish bears to the total number of homesteads in the state.

Subsequently the voters of Louisiana adopted a new state constitution containing revised provisions governing the Revenue Sharing Fund. Article 7, Section 26, of the Constitution of 1974 raised the above legislative formula for distribution insofar as it was based on percentages of homesteads and population in each parish to constitutional status and further increased the amount of the fund to $90,000,000.00. Article 7, Section 26(C) states:

> (C) Distribution Formula. The revenue sharing fund shall be distributed annually as provided by law solely on the basis of population and number of homesteads in each parish in proportion to population and number of homesteads throughout the state. Unless otherwise provided by law, population statistics of the last federal decennial census shall be utilized for this purpose. After deductions in each parish for retirement systems and commissions as authorized by law, the remaining funds, to the extent available, shall be distributed by first priority to the tax recipient bodies within the parish, as defined by law, to offset current losses because of homestead exemptions granted in this Article. Any balance remaining in a parish distribution shall be allocated to the municipalities and tax recipient bodies within each parish as provided by law.

The new constitution also contained revised provisions governing homestead exemptions (Article 7, Section 21) and provided for a system of uniform assessment (Article 7, Section 18), but by virtue of Article 14, Section 13, these provisions were not to become effective until January 1 of the year following the end of three years after the effective date of the new constitution. Until such time as the above provisions were to become effective the provisions of the Constitution of 1921

pertaining to these matters were to remain in effect. Thus the actual homestead exemption is governed at the present time by Article 10, Section 4(9).

FACTS OF THE PRESENT CASE

In accordance with the provisions of Article 7, Section 26, of the Constitution of 1974, the Legislature adopted Act 719 of 1975 allocating $90,000,000.00 to the Revenue Sharing Fund to be distributed pursuant to the following formula:

> Section 3. The amount to be distributed annually to each parish from the revenue sharing fund shall be the sum of (a) an amount equal to that percentage of eighty percent of the total fund which is equal to the ratio which the population of the parish bears to the total state population, and (b) an amount equal to that percentage of twenty percent of the total fund which is equal to the ratio which the number of homesteads in the parish bears to the total number of homesteads in the state. As used in this Section, the term "homesteads" shall mean that enumeration of homestead exemption claims filed with the assessors as determined by the Louisiana Tax Commission as of November fifteenth of the previous calendar year.

As a result of the above formula, Calcasieu Parish received a total appropriation for 1975-1976 in the amount of $3,583,080.00. The amount available for distribution through the recipient bodies after allowance for Sheriff's commissions and retirement contributions was $3,044,150.00. The amount of tax revenue Calcasieu claims to have lost due to homestead exemptions allowed in the parish is $3,491,149.00. As can readily be seen, Calcasieu's portion of the Revenue Sharing Fund amounts to only eighty-seven percent of the revenues claimed lost. There

were no excess funds to be distributed amoung among the municipalities and tax recipient bodies within the parish.

Plaintiffs herein argue for various reasons that the formula in Act 719 of 1975 which failed to reimburse revenue losses attributable to homestead exemptions in full results in a denial of equal protection of the laws, invalidates taxes and impairs contractual obligations.

EQUAL PROTECTION

[1] Calcasieu Parish and its various political subdivisions, as well as taxpayers situated therein, argue that the formula for revenue distribution deprives them of equal protection of the laws inasmuch as the majority of parishes in the state are reimbursed to the full extent of losses attributable to the homestead exemption. Not only are homestead exemptions reimbursed in full, the formula yields to these parishes "excuses"*, or amounts greater than that needed for homestead exemption reimbursements, which excesses are distributed among municipalities and other recipient bodies within the parish.

In applying the guarantee of equal protection to state revenue sharing plans, the court in *Levy v. Parker*, supra, stated:

> The Equal Protection Clause, therefore, reaches all state actions. *Cooper v. Aaron*, 1958, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5, 19. It assures equality not only in the imposition but also in the distribution of state revenues. *Hess v. Mullaney*, 1954, 213 F.2d 635, 15 Alaska 40. Even largesse must be dispensed with an even hand. *Shapiro v. Thompson*, 1969, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600. Tax relief funds, designed to assist localities by making funds raised by state taxes available to local governmental agencies, must be administered by statute and in

*As word appears West Publishing Company edition—"excuses" (i. e., "excesses").

> practice so as to avoid that governmental favoritism to one person over another that the Fourteenth Amendment was designed to proscribe. The failure to accord equal protection to all persons may not be justified by the sophistry that the receipt of funds from the legislature is a "privilege" and not a "right." See *Sherbert v. Verner*, 1963, 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965. (346 F.Supp. 897 at page 903.)

The court further noted:

> The presumption of reasonableness is of course with the state. *Metropolitan Casualty Ins. Co. v. Brownell*, 1935, 294 U.S. 580, 584, 55 S. Ct. 538, 540, 79 L.Ed 1070. Unless it can be shown that the state's failure to treat all alike has no rational basis, the state's action must be sustained. Id., *McGowan v. Maryland*, 1961, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393. (346 F.Supp. 897 at page 901)

In the present case Calcasieu's appropriation was calculated by the same formula as that of all other parishes in the state. It is true that such appropriations were only eighty-seven percent of the losses claimed by Calcasieu, whereas the formula resulted in appropriations to other parishes far greater than losses those parishes claimed as a result of homestead exemption.

We find no merit to this argument advanced by plaintiffs as we note that the degree of "loss" or "excess" experienced by a parish is directly dependent upon the amount each parish claims to have lost as a result of the homestead exemption. These "actual" losses are determined by multiplying the local millage rates by the value of the exempt property. The value of exempt property depends on local assessment practices candidly described in *Levy*, supra, as "assessment-any-basis-you-choose."

Thus the actual losses claimed by a parish are subject to manipulation by the use of high millage rates coupled with artificially low assessments within the parish. This is precisely what the court in *Levy*, supra, found objectionable, that distributions were made from the property tax relief fund on the basis of losses claimed by a parish. Yet, plaintiffs herein ask us to find that they have been treated unfairly because these same losses were not reimbursed one hundred percent. We feel that in light of *Levy*, supra, the extent of reimbursement of homestead exemptions, as long as there exists no uniform system of assessment, is irrelevant. The paramount factor is the implementation of a formula for distribution based on relevant variables not subject to the whim of local political practices.

The formula questioned herein bases revenue distribution on weighted percentages of population and number of homesteads within each parish. The formula does not consider, nor was it designed to consider, the amount of losses a parish claims as a result of homestead exemptions. The latter figure is one which the court found objectionable in *Levy*, supra, as it was subject to gross manipulation. The former figures on the other hand are not subject to the type of manipulation denounced in *Levy*, supra, as they are not related in any way to current assessment practices. Absent a controlled system of assessment, the amounts claimed to be lost by parishes as a result of homestead exemptions simply can not be considered in any determination of inequity.

[2] Plaintiffs argue that the weight assigned to each of the variables (80% to population and 20% to homesteads) is arbitrary. However, plaintiffs overlook that the presumption of reasonableness is with the state. The only offering plaintiffs have made to support their position that the formula is arbitrary is a showing that the formula

fails to reimburse homestead exemptions in Calcasieu Parish one hundred percent, a showing which we have already pointed out is not legally relevant in light of *Levy*, supra.

Accordingly, we conclude that Calcasieu Parish has been treated in a manner consistent with that of the treatment of all other parishes in this state. That treatment is founded in a formula which furthers a legitimate state interest and is rationally related to the furtherance of those interests. The state has a definite interest in providing funds to the various parishes to support local governmental programs and it has enacted a formula not subject to self-serving manipulation through which those funds may be distributed. Thus we find no violation of the equal protection laws with respect to the treatment received by plaintiffs herein.

INVALIDATION OF TAXES AND IMPAIRMENT OF CONTRACT

[3] The provisions presently governing homestead exemptions, Article 10, Section 4, of the Constitution of 1921, contain the following language:

> The provisions of this paragraph shall in no way be construed or applied in such a manner as to: (a) invalidate taxes authorized and imposed prior to the effective date hereof, or (b) impair the obligations, validity or security of any bonds or other debt obligations authorized prior to such date, or (c) make inapplicable any other provisions of this Constitution or laws of this State, in force and effect on such effective date, to the extent that such provisions grant homesteads exemption from taxation.

It is argued by plaintiffs that since they are not reimbursed for the losses incurred as a result of homestead exemption these taxes are invalidated. They further argue that certain bond obligations have been impaired since debt service on said bonds is paid in part from advalorem taxes, the funds from which are significantly reduced as a result of failure to reimburse all homestead exemption losses.

We disagree with plaintiff that taxes have been invalidated within the meaning of the above cited constitutional provisions. The core of plaintiffs' argument here is actually a complaint directed against the homestead exemption itself, for it is the exemption which reduces revenue from advalorem taxes and not the Revenue Sharing Fund (which actually increases available revenue from advalorem taxes). It can not be argued that taxes are invalidated merely because the present revenue generated from those taxes has been reduced in some instances. The system of advalorem taxation is still available to the governing authorities and by adjustment in millage pursuant to law governing authorities can further increase tax revenues resulting from that system. Furthermore, while actual figures are not before us, we feel that a comparison of the revenues generated by advalorem taxation with those lost due to homestead exemptions would indeed indicate that advalorem property taxes are a vital and significant source of governmental revenues.

We likewise disagree with plaintiffs' argument that the validity of security on bonds issued by the governmental authorities has been impaired. Plaintiffs are in agreement with defendants that reimbursement from the property tax relief fund (and subsequently the Revenue Sharing Fund) were never pledged as security for any issued bonds. However, plaintiffs argue that when bonds are sold the purchaser is aware of certain "boundaries" within which security on said bonds will lie. It is argued

that since advalorem taxes are not fully reimbursed the total available revenue with which to secure the bonds is reduced, thereby causing a reduction in the "boundaries" which the purchaser understood to exist at the time they purchased the bonds, thus violating the contract clause of both Article 1, Section 10, of the United States Constitution and Article 1, Section 23, of the Louisiana Constitution of 1974.

[4,5] We find no merit to plaintiffs' argument insofar as it pertains to the impairment of contracts inasmuch as reimbursements have never been pledged as security for these contracts and thus do not form a part of them. With respect to the impairment of security we find such a determination to be one of fact and while plaintiffs have shown a reduction in available funds over those of prior years, there has been no evidence offered to show that such reduction is to the extent that security on the bonds themselves has been in any way affected. We can not equate the mere reduction of revenues with security impairment without a showing of actual circumstances indicating a real danger to the ability of municipalities to satisfy present bond obligations. No such showing has been made herein.

ON BEHALF OF THE CITY OF LAKE CHARLES

[6] The City of Lake Charles has filed a brief wherein it argues that it is entitled by law to participate in appropriations from the Revenue Sharing Fund. We find no merit to such contentions in light of subsequent amendments to Article 12, Section 15 (Eighth), of the Louisiana Constitution of 1921. This article was amended in 1966 at which time the City of Lake Charles was deleted from said provisions. As a result of this amendment, Lake Charles was no longer entitled to be treated as a separate

parish rather than a municipality. Thus, as a municipality we find the City of Lake Charles entitled to participate in the Revenue Sharing Fund as provided for in Article 7, Section 26(C), that is, as a body eligible to receive allocations of remaining balances after losses from homestead exemptions have been satisfied. Aside from this participation in the sharing of excess funds, we find no independent right on behalf of the City of Lake Charles to further participation. We feel as did the trial judge that the City's remedy is an appeal to the legislative process if additional funds are desired.

ALLEGED SRS 275 FORM ERROR

[7] Calcasieu Parish has advanced an argument that double deduction for sheriff's commissions and retirement contributions have been erroneously made on the SRS 275 forms of various parishes (these are the froms upon which are calculated "excesses", if any, a parish will receive after "losses" from homestead exemptions have been satisfied out of a parish's appropriation from the Revenue Sharing Fund.) We find no standing on behalf of Calcasieu Parish to make this challenge inasmuch as one set of deductions for these items was made on Calcasieu's own SRS form. Furthermore, these deductions are in no way related to the initial appropriations received by the parishes from the Revenue Sharing Fund.

Accordingly, for the above and foregoing reasons, the decision of the trial court is affirmed at appellant's cost.

AFFIRMED.

APPENDIX A-1

The order of the Supreme Court of Louisiana of October 20, 1976 provides:

> "Writ denied. The judgment of the court of appeal is correct."

APPENDIX B

Article X, §4 9, prior to *Levy* v. *Parker*, in pertinent part provided:

> Section 4. The following property, and no other, shall be exempt from taxation:
>
> * * *
>
> 9. **Homesteads**. From State, parish and special taxes, the homestead, bonafide * * * to the value of Two Thousand Dollars * * * Provided, that homesteads *shall not be exempt* from taxes, state, parish, local or special * * * *to an amount greater than the necessary funds available in the Property Tax Relief Fund* to make the reimbursement herein provided * * * [Emphasis added.]

The exemption is ~~continued~~ conditional upon state revenue sharing funds being available to make reimbursal of tax losses resulting from the homestead exemption.

APPENDIX C

Article X, §4 9 as amended after *Levy* v. *Parker*:

> 9. **Homesteads.** From state, parish and special taxes, the homestead * * * in the full amount of Two Thousand Dollars of the assessed valuation * * *

The exemption is unconditional.

APPENDIX D

Article 14, §13, Louisiana Constitution of 1974 provides:

> § 13. **Effective Date of Property Tax Provisions**
>
> Section 13. Section 18 and Section 20 of Article VII shall become effective *January 1* of the year following the end of three years after the effective date of the constitution. Until that date, the provisions of the Constitution of 1921 governing matters covered by those Sections *shall continue to apply*, notwithstanding any contrary expiration date stated in any provisions thereof concerning the veterans' homestead exemption. [Emphasis added.]

Article X, §4 9, Constitution of 1921 remains effective until January 1, 1978.

APPENDIX E

Article 7, §18, Constitution of 1974:

§ 18. Ad Valorem Taxes

Section 18. (A) **Assessments.** Property subject to ad valorem taxation shall be listed on the assessment rolls at its assessed valuation, which, except as provided in Paragraph (C), shall be a percentage of its fair market value. The percentage of fair market value shall be uniform throughout the state upon the same class of property.

(B) **Classification.** The classifications of property subject to ad valorem taxation and the percentage of fair market value applicable to each classification for the purpose of determining assessed valuation are as follows:

Classifications	Percentages
1. Land	10%
2. Improvements for residential purposes	10%
3. Other property	15%

Residential properties are assessed at 10% of fair market value, effective *January 1, 1978.*

APPENDIX F

Article 7, § 20, Constitution of 1974:

§ 20. Homestead Exemption

Section 20. (A) **Homeowners.**

(1) The bona fide homestead * * * shall be exempt from state, parish, and special ad valorem taxes to the extent of three thousand dollars of the assessed valuation.

(2) By law enacted by *two-thirds of the elected members* of each house, the *legislature may increase this homestead exemption* to an amount which shall not exceed *five thousand dollars* of the assessed valuation. [Emphasis added.]

$5,000 Homestead exemption's effective date is *January 1, 1978.*

APPENDIX G

Act 387 of 1976:

§ 1703. Exemptions

A. Generally. Effective *January 1, 1978*, and thereafter, there shall be exempt from state, parish, and special ad valorem taxes all property which is declared to be exempt from taxation by Sections 20 and 21 of Article VII of the constitution and pursuant to the authority contained in Section 17 of Article VI of the Constitution, and no other; provided, however, that the exemption for a bona fide homestead, as defined in Paragraph (1) of Subsection A of Section 20 of Article VII of the constitution shall be *five thousand dollars* of assessed valuation. [Emphasis added.]

Homestead exemption is increased to $5,000, effective *January 1, 1978*.

APPENDIX H

Article 7, §26:

§ 26. Revenue Sharing Fund

Section 26. **(A) Creation of Fund.** The Revenue Sharing Fund is created as a special fund in the state treasury.

(B) Annual Allocation. The sum of ninety million dollars is allocated annually from the state general fund to the revenue sharing fund. The legislature may appropriate additional sums to the fund.

(C) Distribution Formula. The revenue sharing fund shall be distributed annually as provided by law solely on the basis of population and number of homesteads in each parish in proportion to population and number of homesteads throughout the state. Unless otherwise provided by law, population statistics of the last federal decennial census shall be utilized for this purpose. After deductions in each parish for retirement systems and commissions as authorized by law, the remaining funds, to the extent available, shall be distributed by first priority to the tax recipient bodies within the parish, as defined by law, to offset current losses because of homestead exemptions granted in this Article. Any balance remaining in a parish distribution shall be allocated to the municipalities and tax recipient bodies within each parish as provided by law.

(D) Distributing Officer. The funds distributed to each parish as provided in Paragraph (C) shall be distributed in Orleans Parish by the city treasurer of New Orleans and in all other parishes by the parish tax collector. The funds allocated to the Monroe City School Board or its successor shall be distributed to and by the city treasurer of Monroe.

(E) Bonded Debt. A political subdivision, as defined by Article VI of this constitution, may incur debt by issuing negotiable bonds and may pledge for the payment of all or part of the principal and interest of such bonds the proceeds derived or to be derived from that portion of the funds received by it from the *revenue sharing fund*, to offset current losses caused by homestead exemptions granted by this Article. Unless otherwise provided by law, no moneys allocated within any parish from the balance

remaining in its distribution may be pledged to the payment of the principal or interest of any bonds. Bonds issued under this Paragraph shall be issued and sold as provided by law, and shall require approval of the State Bond Commission or its successor prior to issuance and sale. [Emphasis added.]

APPENDIX I

Act 719 of 1975:

Be it enacted by the Legislature of Louisiana:

Section 1. For the purposes of this Act the following definitions shall apply and obtain:

(a) "*tax recipient bodies*" shall mean the city of New Orleans, parish governing authorities, school boards, special taxing districts, and other bodies which were eligible for reimbursement or payment from the property tax relief fund prior to its abolition and repeal by Act No. 10 of the 1972 Extraordinary Session. In East Baton Rouge and Terrebonne Parishes, *tax recipient bodies* shall include all public bodies authorized to levy taxes as of July 1, 1975, whose taxes were subject to homestead exemption. [Emphasis added.]

This act made the 1975 appropriations pursuant to a "*rational formula*". However, the act gives *favored treatment to East Baton Rouge and Terrebonne Parishes*, as shown above.

APPENDIX J

Act 16 of 1975:

14 SUPPLEMENTAL REVENUE SHARING PROGRAM

Payable out of the State General Fund for supplemental revenue sharing to the parish of St. Tammany, to the State Treasurer of HB 784 of the 1975 Regular Session, except as such distribution is otherwise specifically provided for herein:

1. St. Tammany Parish, to be paid by the Treasurer to the sheriff of St. Tammany Parish to be distributed to the local governing authority and political subdivisions on a pro rata basis . . . . $ 184,596
2. St. Bernard Parish, to be paid by the Treasurer to the sheriff of St. Bernard Parish to be distributed to the local governing authority and political subdivisions on a pro rata basis . . . . $ 150,000
3. Jefferson Parish, to be paid by the Treasurer to the Sheriff of Jefferson Parish to be distributed to the local governing authority and political subdivisions on a pro rata basis . . . . $ 150,000

This is an example of state revenue sharing *not made pursuant to a "rational formula"*.

APPENDIX K

The 14th Amendment to the United States Constitution provides in pertinent part:

> "Section 1. * * * No State shall make or enforce any law which shall * * * deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX L

Supreme Court of Louisiana

No. 58271

J. CLEM DREWETT, ET AL

versus

STATE OF LOUISIANA

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that J. Clem Drewett, taxpayer, the City of Lake Charles, Louisiana, and other party plaintiffs in the above named action hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Louisiana denying a writ of certiorari or review and affirmed the judgment of the Court of Appeal, First Circuit, which order of the Supreme Court of Louisiana was entered herein on October 20, 1976.

This appeal is taken pursuant to 28 U.S.C., § 1257 (2).

FRANK SALTER, JR.
District Attorney
Parish of Calcasieu
Lake Charles, Louisiana

ROBERT M. MCHALE
Attorney for Lake Charles
Harbor and Terminal District
P. O. Box 1591
Lake Charles, Louisiana

JOSEPH GREENWALD
Assistant District Attorney
Parish of Calcasieu
Lake Charles, Louisiana

PETER CIAMBOTTI
City Attorney
Lake Charles, Louisiana

LOUIS BUFKIN
Attorney for Charles Molbert
Intervenor-Bondholder
P. O. Box 1591
Lake Charles, Louisiana

s/ Fred G. Benton, Jr.
Fred G. Benton, Jr.

Proof of Service

BEFORE ME, the undersigned authority, personally came and appeared Fred G. Benton, Jr., who declared that he is attorney of record for plaintiffs-appellants in the foregoing Notice of Appeal to the Supreme Court of the United States.

Appearer further declared that on the 1st day of December, 1976, he served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the defendant, State of Louisiana, as the defendant and appellee, by mailing a copy thereof in an envelope addressed to the Hon. William J. Guste, Jr., Attorney General, and the Hon. Fred Chevalier, Assistant Attorney General of the State of Louisiana, counsel for the State of Louisiana, with first class postage prepaid and affixed.

Appearer further declared that on the 1st day of December, 1976, a copy of the foregoing Notice of Appeal to the Supreme Court of the United States was mailed, postage prepaid and affixed, to the Clerk of the Supreme Court of the State of Louisiana, and the Clerk of the Nineteenth Judicial District Court within and for the Parish of East Baton Rouge, Louisiana.

Appearer further declared that he is member of the Bar of the United States Supreme Court within the meaning of Supreme Court Rule 33 3.(b).

s/ Fred G. Benton, Jr.
Fred G. Benton, Jr.

Sworn to and subscribed
before me at Baton Rouge,
Louisiana, on this 1st day of
December, 1976.

s/ Rosemary Williams
Notary Public

APPENDIX M

Supreme Court of Louisiana

Court of Appeal
State of Louisiana
First Circuit

Supreme Court No. 58,371

Court of Appeal No. 10,825

J. CLEM DREWETT, ET AL

versus

STATE OF LOUISIANA

Supplemental Notice of Appeal to the Supreme Court of the United States

---

Notice is hereby given that J. Clem Drewett, taxpayer, City of Lake Charles, Louisiana, and other party plaintiffs-appellants in the above-captioned action, hereby appeal to the Supreme Court of the United States from the final Order of the Supreme Court of Louisiana, issued October 20, 1976, denying a writ of certiorari or review and affirming the judgment of the Court of Appeal, First Circuit, State of Louisiana.

Plaintiffs-appellants further appeal from the judgment of the Court of Appeal of May 24, 1976 (rehearing denied June 30, 1976).

This appeal is taken pursuant to 28 U.S.C., § 1257 (2).

FRANK SALTER, JR.
District Attorney
Parish of Calcasieu
Lake Charles, Louisiana

ROBERT M. MCHALE
Attorney for Lake Charles Harbor and Terminal District
P. O. Box 1591
Lake Charles, Louisiana

JOSEPH GREENWALD
Assistant District Attorney
Parish of Calcasieu
Lake Charles, Louisiana

LOUIS BUFKIN
Attorney for Charles Molbert
Intervenor-Bondholder
P. O. Box 1591
Lake Charles, Louisiana

PETER CIAMBOTTI
City Attorney
Lake Charles, Louisiana

s/ Fred G. Benton, Jr.
Fred G. Benton, Jr.

Proof of Service

BEFORE ME, the undersigned authority, personally came and appeared Fred G. Benton, Jr., who declared that he is attorney of record for plaintiffs-appellants in the foregoing Notice of Appeal to the Supreme Court of the United States.

Appearer further declared that on this 22nd day of December, 1976, he served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the defendant, State of Louisiana, by mailing a copy thereof to the Hon. William J. Guste, Jr., Attorney General of the State of Louisiana, attention Mr. Fred Chevalier, Assistant Attorney General, counsel for the State of Louisiana, and by mailing a copy to the Supreme Court of

Louisiana and the Court of Appeal, First Circuit, State of Louisiana, said service being made by posting in the United States mail, propertly addressed and postage prepaid.

s/ Fred G. Benton, Jr.
Fred G. Benton, Jr.

Sworn to as subscribed
Before me at Baton Rouge,
Louisiana, this 22nd day of
December, 1976

s/ Rosemary Williams
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Jurisdictional Statement has this day been served upon Mr. Fred Chevalier, Assistant Attorney General, Post Office Box 44005, Baton Rouge, Louisiana 70804, attorney for defendants herein, by depositing same in the United States mail, postage prepaid.

I further certify that Notice of Appeal was served upon Mr. Fred Chevalier, attorney for defendants, and that confirmation of such service has been given by Mr. Chevalier by telephone and in writing to undersigned counsel.

Baton Rouge, Louisiana, January 10, 1977.

Fred G. Benton

FRED G. BENTON, JR.
Benton, Benton & Benton
601 St. Ferdinand Street
Baton Rouge, Louisiana
Telephone: (504) 343-6611

In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-995

J. CLEM DREWETT, ET AL.,
Appellants,

v.

STATE OF LOUISIANA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

MOTION TO DISMISS

WILLIAM J. GUSTE, JR.
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Baton Rouge, Louisiana 70804

FRED L. CHEVALIER
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Baton Rouge, Louisiana 70804

SUBJECT INDEX

TABLE OF CITATIONS

In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76–995

J. CLEM DREWETT, ET AL.,

Appellants,

v.

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

MOTION TO DISMISS

Appellee with respect moves the Court to dismiss the appeal herein on the following grounds:

I. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE APPEAL

a. Statement of the Case

The old Property Tax Relief Fund of Louisiana was challenged in the suit styled *Levy v. Parker*, 346 F. Supp. 897, (1972), affirmed 411 U.S. 978, 93 S. Ct. 2266, 36 L.Ed. 2d 955, on the grounds that the system used to reimburse for homestead exemption losses denied equal protection of the law to certain parishes. The *Levy* decision held that since the disbursement of Property Tax Relief Fund monies depended on actual losses claimed by the parishes, there was an arbitrary inequality and discrimination in the use of the fund. The court held that

the combination of unequal assessments, limited taxing power and payments from the fund on the basis of local millage rates resulted in an overall system which breached the constitutional rights of the plaintiffs.

Article X, Section 4 of the Constitution of 1921 was amended to eliminate the Property Tax Relief Fund provisions and Section 10(B) was added to Article X to distribute money for homestead exemption losses based on a set formula using the number of homesteads in and the population of the particular parishes involved. (App. A)

It is the contention of Appellant that although the three state courts of Louisiana have held, without the dissent of a single judge, that the present system which is now found in the Louisiana Constitution of 1974 at Article VII, Section 26 (App. B), is based on a rational formula not subject to local manipulation as required by the *Levy* decision, there is some denial of equal protection of the law.

Appellees contend that this claim is frivolous and does not constitute a substantial federal question as demonstrated below.

b. The Non-Uniformity of Assessment Practices Argument

On page 6 of the Appellants' Jurisdictional Statement the contention is made that the important federal question presented in this case is whether a state may continue to deny equal protection of the law by using the present revenue sharing system. Appellants contend that the present system still is in violation of the *Levy* case cited above based on the assertion that local assessment practices are not uniform and thus there is still manipulation on the local level of the receipts from the revenue sharing fund.

I would draw this Court's attention to the fact that Article VII, Section 18 (App. C) of the Louisiana Constitution of 1974 will become effective on January 1, 1978. This section mandates a uniform system of property assessments and sets forth in detail the classifications of property and the percentage of assessment attributible to each. Thus, any argument based on the non-uniformity of assessment practices is moot on January 1, 1978. The "important federal question" as asserted by Appellants is actually a frivolous one.

Furthermore, I would refer the Court to the case of *Bussie v. Long*, 383 F. 2d 766 (1967) in which the court held that an action based on non-equalization of assessments did not state a cause of action for deprivation of civil rights.

c. Prohibited Manipulations Argument

Appellants contend that bona fide legislative appropriations to political subdivisions are "prohibited manipulations" and thus prohibited by *Levy*. Clearly the prohibited activity defined in *Levy* is one on the local level resulting in discrimination among parishes in receipt of Property Tax Relief Fund monies. *Levy* does not address itself to the right of the Legislature to appropriate supplemental monies to any given parish it chooses. Clearly it is within the sovereign power of the State Legislature to appropriate monies to given parishes as

long as the constitutional mandate of the revenue sharing fund using the rational formula set down in the Constitution as so declared by the State Courts is followed. Such supplementary appropriations are not related to the revenue sharing formula and are not violative of the *Levy* decision.

d. Cutoff Date Discrimination Argument

Appellants state that the definition of a "tax recipient body" in Act 719 of 1975 of the Louisiana Legislature is discriminatory and shows favoritism as denounced by *Levy*. However, it is clear that it is within the prerogative of the Legislature, as stated above, to provide details of a distribution program as long as the rational formula set forth in the Constitution is adhered to. In fact, the *Levy* court fully contemplated that not all parishes would receive the equal amount of funds even should a rational formula be arrived at.

e. Impairment of Taxation Through Tax Exemption Denies Equal Protection Argument

Clearly the argument of Appellants that the tax burden is shifted by raising the amount of the homestead exemption is not a substantial federal question. It is within the prerogative of the state to reach policy decisions regarding the taxation of its citizens. The case of *Allied Stores of Ohio, Inc. v. Stanley J. Bowers, Tax Commissioner of Ohio*, 358 U.S. 522, 79 S. Ct. 437, as cited by Appellant, stands for the proposition that if the state proceeds on a rational basis to provide laws for taxation, then the equal protection clause is not violated. Clearly there is a rational formula used for the state

revenue sharing system and thus the equal protection clause is not violated. The case of *Dane v. Jackson, Treasurer, etc.*, 256 U.S. 589, 41 S. Ct. 566, as cited by Appellants also holds that the tax system does not violate the Constitution unless there is a flagrant and a palpable inequality between the burden of taxation imposed and the benefit received by the taxpayers. Clearly there is nothing in the record to show any substantial federal question based on the holding in the *Dane* case.

Appellants make the contention that there is no "reasonable distinction" in classifying a house free from property taxation while classifying an apartment complex not homestead exempted. The most elementary consideration of the homestead exemption is that one's residence should be at least partially exempt from property taxation. This automatically excludes the exemption for apartment complexes owned by individuals that are not their family residences. It is frivolous to contend that persons living in apartments actually pay property taxes through increased rents.

Furthermore, I would refer the Court to the case of *Everson v. Board of Education*, 67 S. Ct. 504, 330 U.S. 1, rehearing denied 67 S. Ct. 962, 330 U.S. 855, wherein it was held that the Supreme Court must not strike down a state statute even though the statute approaches the verge of the constitutional power of the state. In the instant case, *a fortiori*, the revenue sharing system does not begin to approach the verge of the constitutional limits of state power. There is no way a parish may manipulate population and number of homesteads.

f. Contract Clause

Appellants claim that contracts with bondholders are impaired by the present distribution of revenue sharing funds. However, as shown on page 16 of the Jurisdictional Statement filed by Appellants, the Louisiana Court of Appeals for the First Circuit in this case (334 So.2d 443) correctly states that reimbursal for homestead exemptions have never been pledged as security for any bonds and thus do not constitute part of a contract with bondholders. Furthermore, there is no showing of any danger to the ability of municipalities to satisfy present bond obligations. Again Appellees urge this Court that there is no basis to grant jurisdiction on a contract clause argument.

I would refer the court to the case of *Atlantic Coast Line R. Co. v. Phillips*, 67 S. Ct. 1584, 332 U.S. 168 (1947) wherein it is held that the United States Supreme Court is dealing with matters of local policy, like a system of taxation, it should be slow to depart from the judgment of the state court. The *Atlantic Coast Line* case dealt with the contract clause and the determination by a state court as to what constituted part of a particular contract. I would also refer the court to the case of *Smith v. Jennings*, 27 S. Ct. 610, 206 U.S. 276 (1907) regarding the impairment of contract argument and a determination by the state court not questioned by the United States Supreme Court.

Also see *New Orleans Taxpayers Protective Association v. Sewerage and Water Board of New Orleans*, 35 S. Ct. 542, 237 U.S. 33, in which it was held that no substantial federal question was presented by the contention that the obligation of contract between taxpayers in New Orleans under special election statutes was impaired by the requirement that all inhabitants of the city use the public water system.

Further, regarding the equal protection-due process arguments made by Appellants, I would refer this Court to the following cases which stand for the proposition that the United States Supreme Court has not believed that a substantial federal question is presented when dealing with local policy regarding taxation and exemptions therefrom. Those cases are *Utley v. City of St. Petersburg, Florida*, 54 S. Ct. 593, 292 U.S. 106, *Sayward v. Denny*, 15 S. Ct. 777, 158 U.S. 180 (1895); *McDonald v. Oregon, etc.*, 34 S. Ct. 772, 233 U.S. 665; *Los Angeles Farming, etc. Co. v. Los Angeles, California*, 30 S. Ct. 452, 217 U.S. 217.

II. THE JUDGMENT APPEALED FROM RESTS ON AN ADEQUATE NON-FEDERAL BASIS

The issues involved in this suit are issues of tax policy that the United States Supreme Court has, as shown by the following authority, always left to the sound discretion of the individual state courts. It is the contention of Appellee that the decision rendered by the Louisiana Court Appeals for the First Circuit as affirmed by the Louisiana State Supreme Court was based on an interpretation of strictly state constitutional and statutory law and that therefore according to Rule 16 of the United States Supreme Court this motion to dismiss should be granted.

Supporting this conclusion is the case of *Hammerstein v. Superior Court of California, in and for Los Angeles County, California*, 71 S. Ct. 521, 340 U.S. 622; *Kovacs v. Cooper*, 69 S. Ct. 448, 336 U.S. 77, rehearing denied 69 S. Ct. 638, 336 U.S. 921; and *Fay v. Noia*, 83 S. Ct. 822, 372 U.S. 391.

The latter case holds that the co-presence of federal grounds for a decision in state court does not automatically result in the United States Supreme Court jurisdiction being invoked since independent and adequate state grounds were also present. The case at bar clearly was decided on independent and adequate state grounds.

III. STATE TAX POLICY SHOULD BE DECIDED BY THE STATE LEGISLATURE AND INTERPRETED BY STATE COURTS

Jurisdiction of Appeals has consistently been denied by this Court in cases that involve a determination of local policy wherein the best forum for determination of that policy is the State Legislature. In matters of taxation, this court has consistently held that the state court should be the forum for determination of matters of interpretation and applicability of state laws. In support of these contentions, I would refer the court to the cases of *Daniel v. Family Sec. Life Ins. Co.*, 69 S. Ct. 550, 336 U.S. 220; *Avery v. State of Alabama*, 60 S. Ct. 321, 308 U.S. 444; *Pacific States Box & Basket Co. v. White*, 56 S. Ct. 159, 296 U.S. 176; *Arizona Employers' Liability Cases*, 39 S. Ct. 553, 250 U.S. 400; *Central Greyhounds Lines of New York v. Mealey*, 68 S. Ct. 1260, 334 U.S. 653; *Clyde v. Gilchrist*, 43 S. Ct. 501, 262 U.S. 94; *Green v. Frazier*, 40 S. Ct. 499, 253 U.S. 233, which held that

there is a clear presumption in favor of the validity of action taken by the constituted authority of any state regarding the taxing power; *American Oil Company v. Neal*, 85 S. Ct. 1130, 380 U.S. 450; and *Labine v. Vincent*, 91 S. Ct. 1017, 401 U.S. 532, which holds that the Federal Constitution did not give to the United States Supreme Court the power to overturn legislation of the state under the guise of constitutional interpretation.

IV. CLAIMS OF APPELLANT ARE FRIVOLOUS

It is the contention of Appellee that the claims of jurisdiction made by Appellants in this suit are frivolous and do not constitute a substantial federal question and thus the following authority dictates that this Court is without jurisdiction. (28 U.S.C.A. 1257(a); *Honeyman v. Hanan*, 57 S. Ct. 350, 300 U.S. 14; *Seaboard Airline Ry. Co. v. Watson*, 53 S. Ct. 32, 287 U.S. 86)

V. THE OVER CROWDED DOCKET

Since there is no substantial question involved in this appeal and for the other reasons cited above, jurisdiction should not be taken in the appeal. The granting of appeal jurisdiction in this case would waste the time, effort and resources of the Court already dealing with an overcrowded docket.

CONCLUSION

This Court should not take jurisdiction of this appeal, and same should be dismissed with all costs assessed against the Appellant. It is so moved.

Respectfully submitted,

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APPENDIX A

Article X of the Louisiana Constitution of 1921:

9(a). **Property tax relief fund.** That notwithstanding any other provisions in the Constitution herein contained, the Legislature may authorize any municipal corporation in this state, after providing for its statutory and fixed charges, to transfer any surplus funds, not otherwise appropriated or pledged, to a special fund to be designated "Property Tax Relief Fund" for the purpose of providing exemption or relief from the payment of parish, or municipal or taxing district taxes, general or special, all or any part thereof, on all homes within the corporate limits of any municipal corporation owned and occupied by every head of a family, or person having a mother or father or person or persons dependent on him or her for support, to the value of Two Thousand ($2,000.00) Dollars, provided that the aggregate amount of such tax exemption or relief shall in no one year exceed the amount of funds in said Property Tax Relief Fund, and also provided further that the municipal corporation shall provide for the reimbursement of the general or special funds of the parish, municipal corporation or taxing district for any sum or sums which may be lost to the parish, municipal corporation or taxing district occasioned by such exemption or relief, which amount or amounts shall be payable out of the funds in the Property Tax Relief Fund of the municipal corporation.

The above was repealed after the *Levy* decision and the following was enacted as part of Article X of the Constitution of 1921:

§ 10B. Revenue Sharing Fund

Section 10B. There is hereby established and created a special fund in the State Treasury to be known as the Revenue Sharing Fund. The Fund shall be composed of monies which shall be transferred to it annually out of the state general fund by the state treasurer in the amount of Eighty Million and no/100 ($80,000,000.00) Dollars. This provision shall be self-operative. The legislature may allocate additional sums to the Revenue Sharing Fund and shall provide for distribution of the monies in the Fund to those local governing bodies, municipalities, police juries, boards, commissions, districts and other agencies as may be designated by it.
(Added by Acts 1972, Ex.Sess., No. 18, adopted Nov. 7, 1972.)

APPENDIX B

Louisiana Constitution of 1974, Article VII:

Section 26. Revenue Sharing Fund

Section 26. (A) Creation of Fund. The Revenue Sharing Fund is created as a special fund in the state treasury.

(B) Annual Allocation. The sum of ninety million dollars is allocated annually from the state general fund to the revenue sharing fund. The legislature may appropriate additional sums to the fund.

(C) Distribution Formula. The revenue sharing fund shall be distributed annually as provided by law solely on the basis of population and number of homesteads in each parish in proportion to population and the number of homesteads throughout the state. Unless

otherwise provided by law, population statistics of the last federal decennial census shall be utilized for this purpose. After deductions in each parish for retirement systems and commissions as authorized by law, the remaining funds, to the extent available, shall be distributed by first priority to the tax recipient bodies within the parish, as defined by law, to offset current losses because of homestead exemptions granted in this Article. Any balance remaining in a parish distribution shall be allocated to the municipalities and tax recipient bodies within each parish as provided by law.

(D) Distributing Officer. The funds distributed to each parish as provided in Paragraph (C) shall be distributed in Orleans Parish by the city treasurer of New Orleans and in all other parishes by the parish tax collector. The funds allocated to the Monroe City School Board or its successor shall be distributed to and by the city treasurer of Monroe.

(E) Bonded Debt. A political subdivision, as defined by Article VI of this constitution, may incur debt by issuing negotiable bonds and may pledge for the payment of all or part of the principal and interest of such bonds the proceeds derived or to be derived from that portion of the funds received by it from the revenue sharing fund, to offset current losses caused by homestead exemptions granted by this Article. Unless otherwise provided by law, no moneys allocated within any parish from the balance remaining in its distribution may be pledged to the payment of the principal or interest of any bonds. Bonds issued under this Paragraph shall be issued and sold as provided by law, and shall require

approval of the State Bond Commission or its successor prior to issuance and sale.

APPENDIX C

Louisiana Constitution of 1974, Article VII:

Section 18. Ad Valorem Taxes

Section 18. (A) Assessments. Property subject to ad valorem taxation shall be listed on the assessment rolls at its assessed valuation, which, except as provided in Paragraph (C), shall be a percentage of its fair market value. The percentage of fair market value shall be uniform throughout the state upon the same class of property.

(B) Classification. The classifications of property subject to ad valorem taxation and the percentage of fair market value applicable to each classification for the purpose of determining assessed valuation are as follows:

Classifications	Percentages
1. Land	10%
2. Improvements for residential purposes	10%
3. Other property	15%

(C) Use Value. Bona fide agricultural, horticultural, marsh, and timber lands, as defined by general law, shall be assessed for tax purposes at ten percent of use value rather than fair market value. The legislature may provide by law similarly for buildings of historic architectural importance.

(D) Valuation. Each assessor shall determine the fair market value of all peroperty subject to taxation

within his respective parish or district except public service properties, which shall be valued at fair market value by the Louisiana Tax Commission or its successor. Each assessor shall determine the use value of property which is to be so assessed under the provisions of Paragraph (C). Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.

(E) Review. The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

(F) Reappraisal. All property subject to taxation shall be reappraised and valued in accordance with this Section, at intervals of not more than four years.

CERTIFICATE

This is to certify that pursuant to Rule 33 of this Court, copies of the foregoing Motion to Dismiss have been mailed, postage prepaid, to the following: Frank Salter, Jr., District Attorney, Courthouse Building, Parish of Calcasieu, Lake Charles, Louisiana, 70601; Joseph W. Greenwald, Assistant District Attorney, Parish of Calcasieu, Courthouse Building, Lake Charles, Louisiana, 70601; Robert M. McHale, Attorney for Lake Charles Harbor and Terminal District, P. O. Box 1591, Lake Charles, Louisiana, 70601; Louis Bufkin, Attorney for Charles Molbert, Intervenor-Bondholder, P. O. Box 1591, Lake Charles, Louisiana, 70601; Peter Ciambotti, City Attorney, City Hall, Lake Charles, Louisiana, 70601; and Fred G. Benton, Jr., Benton, Benton & Benton, Attorneys at Law, 601 St. Ferdinand Street, Baton Rouge, Louisiana, 70802.

Baton Rouge, Louisiana, February ____, 1977.

FRED L. CHEVALIER

B-5734, 2-77